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EXAMINER

BRANDENBURG, WILLIAM A

ART UNIT

PAPER NUMBER

3622

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10/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/605,242	Applicant(s) NEWMAN, KURT	
	Examiner WILLIAM A. BRANDENBURG	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☒ Claim(s) 18,21,25-27,29-31,41,42,44-48 and 50-52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a non-final, first action on the merits in response to application filed on 09/17/2003. Claims 1-52 are pending.

Claim Objections

2. Claims 18, 21, 25-27, 29-31, 41-42, 44-48 and 50-52 are objected to under 37 CFR 1.75(c) as being in improper form because of the following:

Claim 18 and 21 depend from another multiple dependent claim. As per MPEP 608.01(n), a multiple dependent claim cannot depend from any other multiple dependent claims.

Claims 25-27, 29-32, 41-42, 44-48 and 50-52 depend from claims of a different statutory category. The Examiner notes it appears the Applicant made a simple oversight when applying the dependencies.

See MPEP § 608.01(n).

3. Claim 49 is objected to because of the following informalities:

Claim 49 recites "a method of making a system to apply different treatments" in the preamble of the claim. Claim 49

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then recites "providing a server" and "providing a test control system" in the body of the claim. The Examiner notes the preamble is quite confusing. How can one make a system? If one could make a system, how do the simple steps of "providing" in the body of the claim qualify as "making a system"? As such, it is unclear to the Examiner whether the preamble simply has typographical errors present in it or the Applicant is trying to claim multiple statutory categories in a single claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 13 recites the limitation "the output files" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 43-48 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 43 recites "a computer-readable medium having computer-executable instructions for performing a method" in the preamble of the claim. The Examiner notes that as per MPEP 2106, "35 U.S.C. 101 defines four categories of inventions that Congress deemed to be the appropriate subject matter of a patent: processes, machines, manufactures and compositions of matter." The Examiner notes that as per paragraph [0051] of the Applicant's specification, the medium may simply be stream of information. Based on this disclosure, the Examiner understands this to be simply a transitory form of signal transmission. As per the "Interim Examination Instructions For Evaluating Subject Matter Eligibility Under 35 U.S.C. §101"

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issued by the USPTO, effective as of August 24, 2009, "transitory forms of signal transmissions" are considered "non-limiting examples of claims that are not directed to one of the statutory categories" (page 2). As such, the Applicant's claimed invention fails to fall within one of the statutory categories and thus deemed non-statutory as per MPEP 2106.01.

Claims 44-48 depend from claim 43 and do not cure the deficiencies set forth above. As such, claims 44-48 are also rejected for being directed towards non-statutory subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6. **Claims 1-11 and 15-52 are rejected under 35 U.S.C. 102(e)**

as being anticipated by Louviere et al. (US 6,934,748 B1)

(hereinafter Louviere).

7. As per claim 1, Louviere discloses a method to apply different treatments, comprising:

defining at least one treatment (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65);

selecting at least one channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65); and

applying the at least one treatment to the at least one selected channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

8. As per claim 2, Louviere discloses the method of claim 1

(as rejected above). Louviere further discloses wherein

defining the at least one treatment comprises

defining one of a content treatment and an auxiliary content treatment (col. 5, line 9 - col. 6, line 35, see also

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col. 15, line 20 - col. 18, line 14, see also col. 23, line 50
- col. 26, line 65).

9. As per claim 3, Louviere discloses the method of claim 2
(as rejected above). Louviere further discloses wherein
applying the auxiliary content treatment comprises

applying a predetermined treatment in response to a
conditional logic statement (col. 15, line 20 - col. 18, line
14, see also col. 23, line 50 - col. 26, line 65).

10. As per claim 4, Louviere discloses the method of claim 2
(as rejected above). Louviere further discloses further
comprising

applying the at least one content treatment or the
auxiliary content treatment according to a conditional logic
statement in response to the treatment being flagged as a rule
set (col. 15, line 20 - col. 18, line 14, see also col. 23,
line 50 - col. 26, line 65).

11. As per claim 5, Louviere discloses the method of claim 1
(as rejected above). Louviere further discloses further
comprising

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applying the at least one treatment to a control point associated with each selected channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

12. As per claim 6, Louviere discloses the method of claim 1 (as rejected above). Louviere further discloses wherein applying the at least one treatment to the at least one selected channel comprises

at least one of applying at least one chosen treatment to a web site, applying at least one chosen treatment to e-mail, applying at least one chosen treatment to an automatic teller (ATM) screen, applying at least one chosen treatment to an on-hold telephone message, applying at least one chosen treatment to direct mailing, applying at least one chosen treatment to outbound telemarketing and applying at least one chosen treatment to marketing a product or service (col. 5, line 9 - col. 6, line 51, see also col. 23, line 50 - col. 26, line 65).

13. As per claim 7, Louviere discloses the method of claim 1 (as rejected above). Louviere further discloses further comprising

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selecting at least one test cell including at least one control point and at least one treatment associated with each control point (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

14. As per claim 8, Louviere discloses the method of claim 7 (as rejected above). Louviere further discloses further comprising

defining a plurality of test groups each comprising a plurality of test cells (col. 17, lines 1-38, see also col. 23, line 50 - col. 26, line 65).

15. As per claim 9, Louviere discloses the method of claim 8 (as rejected above). Louviere further discloses further comprising

defining at least one matrix, each matrix including selected test groups of the plurality of test groups (col. 9, line 1 - col. 10, line 29, see also col. 16, line 20 - col. 17, line 59).

16. As per claim 10, Louviere discloses the method of claim 9 (as rejected above). Louviere further discloses further comprising

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defining a transition to a new matrix (col. 21, lines 20-64).

17. As per claim 11, Louviere discloses the method of claim 9 (as rejected above). Louviere further discloses wherein defining the transition to a new matrix comprises:

selecting a percentage of each test group in a previous matrix to be associated with each test group in the new matrix (col. 21, lines 20-64); and

selecting a mapping path for each test group in the previous matrix (col. 17, lines 1 - col. 18, line 43, see also col. 21, lines 20-64).

18. As per claim 15, Louviere discloses the method of claim 1 (as rejected above). Louviere further discloses wherein evaluating results comprises:

accessing historical data related to treatments applied to different customers and segments of customers stored in a data source (col. 13, lines 20-59, see also col. 17, line 65 - col. 18, line 14, see also col. 26, line 48 - col. 27, line 7);

evaluating a margin of success or failure of each treatment applied to different segments and customers via different

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channels (col. 13, lines 20-59, see also col. 26, line 48 - col. 27, line 7); and

adjusting practices or operations based on results of the evaluation (col. 13, lines 20-59, see also col. 20, lines 10-28, see also col. 26, line 48 - col. 27, line 47).

19. As per claim 16, Louviere discloses the method of claim 1 (as rejected above). Louviere further discloses further comprising

testing an effect of the application of the at least one treatment to the at least one selected channel (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

20. As per claim 17, Louviere discloses a method to apply different treatments, comprising:

accessing historical data related to treatments from a data source (col. 13, lines 20-59, see also col. 17, line 65 - col. 18, line 14, see also col. 26, line 48 - col. 27, line 7);

evaluating a margin of success or failure of each treatments applied to different segments via different channels (col. 13, lines 20-59, see also col. 26, line 48 - col. 27, line 7); and

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adjusting practices or operations based on results of the evaluation (col. 13, lines 20-59, see also col. 20, lines 10-28, see also col. 26, line 48 - col. 27, line 47).

21. As per claim 18, Louviere discloses the method of claim 16 (as rejected above). Louviere further discloses further comprising

applying at least one treatment to at least one selected channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

22. As per claim 19, Louviere discloses the method of claim 17 (as rejected above). Louviere further discloses wherein

applying the at least one treatment to the at least one selected channel comprises at least one of applying at least one chosen treatment to a web site, applying at least one chosen treatment to e-mail, applying at least one chosen treatment to an automatic teller (ATM) screen, applying at least one chosen treatment to a telephone answering menu system and applying at least one chosen treatment to direct mailing (col. 5, line 9 - col. 6, line 51, see also col. 23, line 50 - col. 26, line 65).

23. As per claim 20, Louviere discloses the method of claim 17 (as rejected above). Louviere further discloses wherein applying the at least one treatment comprises

applying the at least one treatment to a control point associated with each selected channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

24. As per claim 21, Louviere discloses the method of claim 16 (as rejected above). Louviere further discloses further comprising

selecting at least one test cell including at least one control point and at least one treatment associated with each control point (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

25. As per claim 22, Louviere discloses the method of claim 19 (as rejected above). Louviere further discloses further comprising

defining a plurality of test groups each comprising a plurality of test cells (col. 17, lines 1-38, see also col. 23, line 50 - col. 26, line 65).

26. As per claim 23, Louviere discloses the method of claim 21 (as rejected above). Louviere further discloses further comprising

defining at least one matrix, each matrix including selected test groups of the plurality of test groups (col. 9, line 1 - col. 10, line 29, see also col. 16, line 20 - col. 17, line 59).

27. As per claim 24, Louviere discloses a system to apply different treatments, comprising:

a server (col. 4, lines 47-52); and

a test control system operating on the server to apply each treatment selected from a plurality of treatments to a chosen channel (Fig. 2, "12", see also col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

28. As per claim 25, Louviere discloses the system of claim 23 (as rejected above). Louviere further discloses further comprising

a data source to store the plurality of treatments (Fig. 2, "24", see also col. 7, lines 42-67).

29. As per claim 26, Louviere discloses the system of claim 23 (as rejected above). Louviere further discloses further comprising

a data source to store historical data related to the selected treatments applied to each chosen channel (Fig. 2, "36", see also col. 13, lines 18-59).

30. As per claim 27, Louviere discloses the system of claim 23 (as rejected above). Louviere further discloses wherein

each treatment comprises one of a content treatment and an auxiliary content treatment (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

31. As per claim 28, Louviere discloses the system of claim 26 (as rejected above). Louviere further discloses wherein

the auxiliary content treatment comprises a predetermined treatment applicable to the chosen channel in response to a conditional logic statement (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

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32. As per claim 29, Louviere discloses the system of claim 23 (as rejected above). Louviere further discloses wherein a treatment flagged as a rule set is applicable to the chosen channel in response to a conditional statement associated with the rule set (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

33. As per claim 30, Louviere discloses the system of claim 23 (as rejected above). Louviere further discloses wherein the chosen channel comprises at least one of a web site, e-mail, automatic teller (ATM), on-hold message system, electronic kiosk, outbound telemarketing system direct mailing, marketing a product or service (col. 5, line 9 - col. 6, line 51, see also col. 23, line 50 - col. 26, line 65).

34. As per claim 31, Louviere discloses the system of claim 23 (as rejected above). Louviere further discloses further comprising at least one test cell defining at least one control point associated with each chosen channel and at least one treatment associated with each control point (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

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35. As per claim 32, Louviere discloses the system of claim 30

(as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to present a treatment graphical user interface (GUI) to a user via a browser to create and edit selected treatments and to select control points associated with each treatment (Fig. 2, "38", see also col. 14, lines 9-36).

36. As per claim 33, Louviere discloses the system of claim 30

(as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to present a control point GUI to a user via a browser to create and edit control points (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 23, line 57 - col. 24, line 5).

37. As per claim 34, Louviere discloses the system of claim 30

(as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to present a test cell GUI to a user via a browser to create test cells and select treatments to be associated with each test cell (Fig. 2, "38", see also col. 14, lines 9-36, see also

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col. 15, line 20 - col. 18, line 25, see also col. 23, line 57
- col. 24, line 5).

38. As per claim 35, Louviere discloses the system of claim 30
(as rejected above). Louviere further discloses further
comprising

at least one test group including selected ones of a
plurality of test cells (col. 17, lines 1-38, see also col.
23, line 50 - col. 26, line 65).

39. As per claim 36, Louviere discloses the system of claim 31
(as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to
present a test groups GUI to a user via a browser to define
and edit each test group (Fig. 2, "38", see also col. 14,
lines 9-36, see also col. 15, line 20 - col. 18, line 25, see
also col. 23, line 57 - col. 24, line 5).

40. As per claim 37, Louviere discloses the system of claim 34
(as rejected above). Louviere further discloses further
comprising

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at least one test matrix including selected ones of a plurality of test groups (col. 9, line 1 - col. 10, line 29, see also col. 16, line 20 - col. 17, line 59).

41. As per claim 38, Louviere discloses the system of claim 36 (as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to present a test matrix GUI to a user via a browser to create and edit the test matrices (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 23, line 57 - col. 24, line 5).

42. As per claim 39, Louviere discloses the system of claim 37 (as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to present a test groups selection GUI to the user via a browser to select test groups to be associated with each test matrix (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 23, line 57 - col. 24, line 5).

43. As per claim 40, Louviere discloses the system of claim 37 (as rejected above). Louviere further discloses wherein

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the test control system comprises a data structure to present a test matrix transition GUI to a user via a browser to select percentages of each test group of a prior test matrix to be transferred to each test group of a new test matrix and to select a mapping path for each test group and a channel to be associated with each test group (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 21, lines 20-65, see also col. 23, line 57 - col. 24, line 5).

44. As per claim 41, Louviere discloses the system of claim 23 (as rejected above). Louviere further discloses further comprising

a control point to apply each treatment to the chosen ones of the plurality of channels (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

45. As per claim 42, Louviere discloses the system of claim 23 (as rejected above). Louviere further discloses further comprising

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a data structure to generate a report of all customers changing segments (col. 14, lines 1-23, see also col. 20, lines 16-59, see also col. 22, lines 10-30).

46. As per claim 43, Louviere discloses a computer-readable medium having computer-executable instructions for performing a method, comprising:

defining at least one treatment (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65);

selecting at least one channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65); and

applying the at least one treatment to the at least one selected channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

47. As per claim 44, Louviere discloses the computer-readable medium having computer-executable instructions for performing the method of claim 42 (as rejected above). Louviere further discloses further comprising

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applying the at least one treatment to a control point associated with each selected channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

48. As per claim 45, Louviere discloses the computer-readable medium having computer-executable instructions for performing the method of claim 42 (as rejected above). Louviere further discloses wherein

applying the at least one treatment to the at least one selected channel comprises at least one of applying at least one chosen treatment to a web site, applying at least one chosen treatment to e-mail, applying at least one chosen treatment to an automatic teller (ATM) screen, applying at least one chosen treatment to an on-hold telephone message, applying at least one chosen treatment to direct mailing, applying at least one chosen treatment to outbound telemarketing and applying at least one chosen treatment to marketing a product or service (col. 5, line 9 - col. 6, line 51, see also col. 23, line 50 - col. 26, line 65).

49. As per claim 46, Louviere discloses the computer-readable medium having computer-executable instructions for performing

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the method of claim 42 (as rejected above). Louviere further discloses further comprising

selecting at least one test cell including at least one control point and at least one treatment associated with each control point (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

50. As per claim 47, Louviere discloses the computer-readable medium having computer-executable instructions for performing the method of claim 42 (as rejected above). Louviere further discloses further comprising

defining at least one matrix, each matrix including selected test groups of a plurality of test groups (col. 9, line 1 - col. 10, line 29, see also col. 16, line 20 - col. 17, line 59).

51. As per claim 48, Louviere discloses the computer-readable medium having computer-executable instructions for performing the method of claim 42 (as rejected above). Louviere further discloses further comprising defining a transition to a new matrix including:

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selecting a percentage of each test group in a previous matrix to be associated with each test group in the new matrix (col. 21, lines 20-64); and

selecting a mapping path for each test group in the previous matrix (col. 17, lines 1 - col. 18, line 43, see also col. 21, lines 20-64).

52. As per claim 49, Louviere discloses a method of making a system to apply different treatments, comprising:

providing a server (col. 4, lines 47-52); and

providing a test control system operating on the server to apply each treatment selected from a plurality of treatments to a chosen channel (Fig. 2, "12", see also col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

53. As per claim 50, Louviere discloses the method of claim 48 (as rejected above). Louviere further discloses wherein

providing the test control system comprises providing a data structure to present a control point GUI to a user via a browser to create and edit control points (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 23, line 57 - col. 24, line 5).

54. As per claim 51, Louviere discloses the method of claim 48 (as rejected above). Louviere further discloses wherein providing the test control system comprises providing a data structure to form treatments to be applied to chosen channels (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 23, line 57 - col. 24, line 5).

55. As per claim 52, Louviere discloses the method of claim 48 (as rejected above). Louviere further discloses wherein providing the test control system comprises providing a data structure to form a matrix to apply treatments to chosen channels (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 23, line 57 - col. 24, line 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

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the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

56. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Louviere et al. (US 6,934,748 B1) (hereinafter Louviere).

57. As per claim 12, Louviere discloses the method of claim 10 (as rejected above).

Louviere does not explicitly disclose further comprising validating the new matrix.

However, Louviere does teach a prediction generator that specifies particular segments for investigation and optimization of content delivery. Users are search and clustered together according to similarities and differences in their characteristics and optimal content. These clustered groups function as segments for implementing predictions (col. 21, lines 20-64, see also col. 13, lines 18-59). In addition, Louviere teaches a scripting/scheduling engine that can automatically control all functionality of the system. This scripting/scheduling creates script to direct various elements

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of the system to perform a particular action or set of actions. Each script may include basic error handling procedures (col. 14, line 46 - col. 15, line 15, see also col. 22, line 55 - col. 23, line 48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Louviere to include validating. The rationale for this inclusion is that there are a limited number of predictable techniques one could perform to prevent errors, one of which includes validating. The Examiner notes that based on the teachings of Louviere with regards to the automated error handling of system operations, it would have been obvious to include the obvious variation of validating of the instant invention.

58. As per claim 13, Louviere discloses the method of claim 12 (as rejected above). Louviere further discloses further comprising

updating the output files for each channel according to the new matrix (col. 21, lines 20-64).

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59. As per claim 14, Louviere discloses the method of claim 13 (as rejected above). Louviere further discloses further comprising

altering the channels in response to the new treatments associated with the new matrix (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 21, lines 20-64, see also col. 23, line 50 - col. 26, line 65).

Conclusion

60. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM A. BRANDENBURG whose telephone number is (571)270-5488. The examiner can normally be reached on Monday-Thursday 6:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571)272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/W. A. B./
Examiner, Art Unit 3622

/John Van Bramer/
John Van Bramer
Examiner, Art Unit 3622